



Proposed Regulation Agency Background Document

Agency name	Department of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-740
Regulation title	Adult Protective Services
Action title	Technical Amendments
Document preparation date	July 29, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This regulation establishes guidelines and expectations relative to (1) the receipt, investigation, and disposition of reports of adult abuse, neglect, and/or exploitation, and (2) the provision of protective services to adults found to need protection. This regulation provides guidance to local departments of social services for investigating reports and protecting the health, safety, and welfare of the elderly and adults with a disability and to maximize statewide consistency in the implementation of the APS program.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Federal authority is found in Title XX of the Social Security Act, Section 2001, number (3). The State statute providing the mandate for this regulation is found in the *Code of Virginia*, § 63.2-217 and § 63.2-1610.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amendment to this regulation is necessary to bring it into compliance with areas of the *Code of Virginia* that are already changed.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The major changes are technical in nature and not substantive, including language changes to bring the regulation into compliance with current *Code* language, the updating of several State agency names, and deleting outdated terminology. In addition, *Code* references are updated in response to October 2002's recodification of the Social Services section of the *Code* where § 63.1 was repealed and replaced by § 63.2.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The advantage to making these changes is to bring the regulation into compliance with previously promulgated changes. This helps to ensure that adult protective services are provided in a consistent manner across the state in the 121 local departments of social services.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>In FY 02, just under \$1 million was allocated to the 121 local departments of social services for adult protective services. This includes 80 percent of funding from the General Fund and a 20 percent local match. Funding may be used for either administration of the adult protective services program by the local departments of social services or purchased services for adults.</p>
<p>Projected cost of the regulation on localities</p>	<p>No additional costs are projected.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Persons aged 60 and over and adults aged 18 and over and who have a disability are protected by this regulation. Persons who are mandated to report suspected cases of adult abuse, neglect, or exploitation are also affected. This includes health care providers, social workers, law-enforcement, mental health professionals and others.</p>
<p>Agency’s best estimate of the number of such entities that will be affected</p>	<p>In 2000, an estimated 7 million persons lived in Virginia; of those, 1.09 million are 60 or older (Commonwealth Council on Aging, Annual Report to the Governor and the General Assembly, 1999-2000). A reported 300,000 adults reported having a health condition or impairment that limits their daily activities (1995 data).</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>No costs are projected for affected individuals, businesses, or other entities.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

This regulation was developed with the assistance of representatives of local departments of social services and field staff. Adult Protective Services' philosophy is that the least restrictive and least intrusive intervention necessary to protect the adult and stabilize the situation is the most appropriate. No other alternatives have been considered.

Public comment

Please summarize all public comment received during 30-day period following the publication of the NOIRA, and provide the agency response.

No public comments were received during the 30-day period following the publication of the NOIRA.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Local departments of social services receive and investigate more than 10,000 reports of adult abuse, neglect, and exploitation annually. Adult protective services is the only program authorized by the *Code of Virginia* (§ 63.2-1607) to investigate suspected abuse, neglect, and exploitation across all care settings. Reports alleging that adults are abused, neglected, or exploited, or are at risk of abuse, neglect, or exploitation and are unable to protect their own interests due to vulnerability associated with incapacity or due to a mental or physical disability are investigated. Services are provided to those adults who are found, through an APS investigation, to require protective services.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Part I, Definitions		The terms “committee” and “public welfare” are used.	The terms “guardian” and “conservator” replace “committee.” “Departments of public welfare or social services” is changed to “departments of social services.” The changes comply with previous <i>Code</i> changes.
22 VAC 40-740-40 Dispositions and 22 VAC 40-740-60 Services Provided		The phrase “reason to suspect” is used.	If there is no “preponderance of evidence,” then the complaint is considered unfounded. Changing “reason to suspect” brings Adult Protective Services’ standards of evidence in line with that used by Child Protective Services.
22 VAC 40-740-50 Disclosure of Adult Protective Services Information		State agency names and act names that are no longer used are in the regulation. Current language refers to regional offices.	<p>Change several State agencies’ names to reflect current nomenclature (i.e., “Department for Rights of Virginians with Disabilities” is now the “Virginia Office of Protection and Advocacy;” the Division of Licensure and Certification of the Department of Health is now “the Center for Quality Health Care Services and Consumer Protection;” and the Office of the State Long-Term Care Ombudsman is no longer within the Department for the Aging, but a stand-alone entity.</p> <p>References to “central” or “regional” offices of the Department are eliminated to reflect current restructuring.</p> <p>Change “Privacy Protection Act” found at § 2.1-332 to the “Government Data Collection and Dissemination Practices Act” at § 2.2-3800 of the <i>Code of Virginia</i> to comply with the act’s name change.</p>

<p>Throughout the text</p>		<p>Outdated language is used. <i>Code</i> references are ones in use prior to October 1, 2002, when § 63.1 was recodified to § 63.2.</p>	<p>“Local agency” is changed to “local department” to reflect current practice when referring to local departments of social services.</p> <p>“Client” is changed to “adult” to reflect recent policy changes.</p> <p>References to § 63.1 of the <i>Code of Virginia</i> are changed to their corresponding citations in the recodified § 63.2.</p>
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